

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
DEC 20 2012
[Signature]

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

JOSEPH E. ESPINOSA, SR.,

Defendant.

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CR 07-30079

OPINION AND ORDER DENYING
MOTION FOR RECONSIDERATION

Defendant, who is serving a thirty year sentence for aggravated sexual abuse, filed a motion for post conviction DNA testing pursuant to the Innocence Protection Act of 2004, 18 U.S.C. § 3600. I denied the motion because (1) some of the items sought to be tested were already subject to testing and there was no contention that there are new methods or technology which were not available when the items were tested in 2007, (2) there was no contention by the defendant and there was no trial testimony that the government ever had the other items sought to be tested in its custody, (3) any evidence obtained from further testing would not raise a reasonable probability that the defendant did not commit the offense because the DNA evidence admitted did not raise any probability that the defendant did commit the offense, and (4) the defendant did not meet the timeliness criteria.

Defendant filed a motion for reconsideration based upon the fact that I did not give notice to and an opportunity for the government to respond, thus denying him the opportunity to file a reply to further litigate his claim. Based upon the record, defendant did not meet the criteria under 18 U.S.C. § 3600(a) so there was no need for a response from the government pursuant to 18 U.S.C. § 2600(b).


Defendant has filed a notice of appeal, depriving this Court of jurisdiction to consider his motion.

Now, therefore,

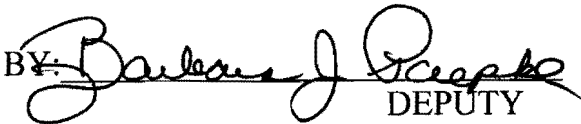
IT IS ORDERED that the defendant's motion, Doc. 118, for reconsideration is denied.

Dated this 19th day of December, 2012.

BY THE COURT:


CHARLES B. KORNMANN
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
DEPUTY
(SEAL)